THE HONORABLE JAMES L. ROBART 1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 WESTERN DISTRICT OF WASHINGTON 8 CENTER FOR BIOLOGICAL No. 2:13-cy-01866-JLR DIVERSITY, 9 Plaintiff, 10 v. 11 UNITED STATES ENVIRONMENTAL AMICI CURIAE'S REPLY IN SUPPORT 12 PROTECTION AGENCY; GINA OF MOTION FOR LEAVE TO FILE McCARTHY, Administrator; and DENNIS REPLY BRIEF 13 McLERRAN, Region 10 Administrator, United States Environmental Protection 14 NOTE ON MOTION CALENDAR: Agency, November 7, 2014 15 Defendants. 16 Amici curiae Western States Petroleum Association and American Petroleum Institute 17 (the "Associations") respectfully submit this reply to the opposition filed by the plaintiff. See 18 19 Dkt. 60. The Associations do not dispute that courts generally limit the role of amici. Indeed, 20 the Court so provided in its order granting leave to the Associations to participate as amici and 21 limiting the Associations to one brief unless leave to file a reply was obtained. See Dkt. 22 at 21. 22 Contrary to the plaintiff's implication, Ninth Circuit rules are not binding in this matter and the 23 Court, in its discretion, may use those rules as guidance or proceed in the manner it deems just 24 and appropriate under the circumstances. See, e.g., Salmon Spawning & Recovery Alliance v. 25 Lohn, No. 06-1462, 2008 U.S. Dist. LEXIS 30809 at \*4, Dkts. 22 and 36 (W.D. Wash. Mar. 20, 26 2008) (amici reply brief permitted by court order and filed in case). AMICI'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE REPLY BRIEF

(2:13-cv-01866-JLR) - 1

1	The plaintiff's opposition simply restates what the plaintiff views as a general rule
2	without engaging in any consideration of the extraordinary circumstances present here. In a
3	nutshell, those circumstances are these: (i) the Associations have addressed standing, which is
4	an issue that the plaintiff bears the burden of establishing as a matter of Article III jurisdiction
5	and as to which the Court must rule before reaching the issues briefed by the parties; (ii) standing
6	has not been addressed by the defendants and, accordingly, a reply in this context is not
7	duplicative, but rather meets the traditional purpose of a reply; (iii) the plaintiff raised new
8	arguments and misstated the content of applicable law and these matters will go unaddressed
9	unless the Associations' proposed reply brief is considered; and (iv) the burden associated with
10	consideration of the proposed reply brief is very limited because the proposed brief is short and
11	entirely responsive (and the plaintiff does not argue otherwise). Accordingly, the Associations
12	respectfully request that the Court grant their motion for leave to file a reply brief in this matter.
13	
14	DATED: October 29, 2014.
15	STOEL RIVES LLP
16	/s/ Ryan P. Steen Ryan P. Steen, WSBA No. 39922
17	Jeffrey W. Leppo, WSBA No. 11099 Daniel K. Lee, WSBA No. 46796
18	<u>rpsteen@stoel.com</u> <u>jwleppo@stoel.com</u>
19	dklee@stoel.com
20	600 University Street, Suite 3600 Seattle, WA 98101
21	Telephone: (206) 624-0900 Facsimile: (206) 386-7500
22	Attorneys for Western States Petroleum Association and American Petroleum Institute
23	Association and American I ciroleum institute
24	
25	
26	

AMICI'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE REPLY BRIEF (2:13-cv-01866-JLR) - 2

1	<u>CERTIFICATE OF SERVICE</u>
2	I hereby certify that on October 29, 2014, I filed a true and correct copy of the foregoing
3	document with the Clerk of the Court for the United States District Court – Western District of
4	Washington by using the CM/ECF system. Participants in this Case No. 2:13-cv-01866-JLR
5	who are registered CM/ECF users will be served by the CM/ECF system.
6	/s/ Ryan P. Steen
7	Ryan P. Steen
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

AMICI'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE REPLY BRIEF (2:13-cv-01866-JLR) - 3

26